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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

H2

MAR 04 2004

FILE:

Office: MIAMI, FL

Date:

IN RE:

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). On a first motion to reopen, the AAO dismissed the motion and affirmed the order dismissing the appeal. The matter is now before the AAO on a second motion to reconsider. The motion will be granted and the previous decisions of the District Director and the AAO will be affirmed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation in June 1994. The applicant married a native of Haiti and naturalized citizen of the United States in March 1997. The applicant is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to have her status adjusted to that of a lawful permanent resident under section 902 of the Haitian Refugee Immigrant Fairness Act of 1998, Pub.L. 105-277. The applicant seeks the above waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The decision of the acting district director was affirmed on appeal by the AAO. *See* Decision of the AAO, dated October 29, 2002. On first motion to reopen, the AAO dismissed the motion and affirmed the order dismissing the appeal. *See* Decision of the AAO, dated June 5, 2003.

On second motion to reopen and reconsider, the applicant states that she is submitting “supports of the good faith” of her marriage with her U.S. citizen spouse. The applicant asserts that her residency application was denied owing to lack of proof that she and her husband were living together. *See* Joint Motion to Reopen and Reconsider, undated.

In support of these assertions, the applicant submits a declaration of the applicant’s husband, undated; a copy of the naturalization certificate of the applicant’s husband; a copy of the marriage record of the applicant and her spouse; letters of support and copies of financial and tax documents for the couple. The entire record was reviewed and considered in rendering a decision on the application.

The record reflects that the applicant attempted to procure admission into the United States on June 23, 1994, by presenting a photo-substituted French passport in the name of Maurice Bertrand Adolphe Jean Marie Drouin.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A

motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The applicant asserts that her application was denied because she failed to provide proof that she and her spouse were residing together. However, the prior decisions of the acting district director and the AAO clearly state that the application was denied and the appeal was dismissed because the applicant failed to prove that extreme hardship would be imposed on her U.S. citizen husband as a result of her inadmissibility to the United States. The prior decisions under this application do not question the bona fides of the applicant's marriage. On second motion to reopen and reconsider, the applicant does not provide any additional evidence to warrant a finding of extreme hardship. The applicant's husband states that he loves the applicant and that as a diabetic, he is dependent on her for care. *See Declaration of Raymond Augustin, undated.* The record does not establish that the applicant's husband requires constant care for his medical condition and the record does not demonstrate that the applicant is the only person able to provide the care that her husband requires. Further, the record does not demonstrate why this hardship was not or could not have been raised in prior proceedings under this application.

The applicant fails to provide evidence that was not available previously and could not have been discovered during the prior proceedings under this application. Further, the applicant fails to establish that the prior decision of the AAO was based on an incorrect application of law or CIS policy.

The applicant in this case has failed to identify any erroneous conclusion of law or statement of fact in her appeal. In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See Section 291 of the Act, 8 U.S.C. § 1361.* Here, the applicant has not met that burden. Accordingly, the motion will be granted and the previous decisions of the acting district director and the AAO will not be disturbed.

ORDER: The motion is granted. The AAO decision of October 29, 2002 dismissing the appeal is affirmed.